IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.12.2004

CORAM

THE HONOURABLE MR. JUSTICE P.K. MISRA
AND
THE HONOURABLE MR. JUSTICE S. ASHOK KUMAR

WRIT PETITION NO.20510 OF 2004
and
WPMP.No.24693 OF 2004

1. UOI rep. by the Secretary
   Ministry of Defence (DP&S)
   Sena Bhawan, New Delhi 11.

2. The General Manager,
   Heavy Vehicles Factory,
   Avadi, Chennai 600 054.

3. The Addl. Director General
   Ordnance Factory Board,
   Armoured Vehicle Headquarters,
   Avadi, Chennai 600 054. .. Petitioners

Vs.

1. M. Mani,
   Ex-Supervisor, HVF.

2. The Central Administrative Tribunal,
   Rep. By its Registrar,
   City Civil Court Buildings,
   High Court, Chennai 600 104. .. Respondents

Petition filed under Article 226 of the Constitution of India for the issuance of Writ of Certiorari to call for the records pertaining to the order dated 29.4.2004 in O.A.No.933/2003, on the file of Central Administrative Tribunal and quash the same.

For Petitioners : Mr.K. Veeraraghavan, SCGSC

For Respondent-1 : Mr.N. Balamuralikrishnan for M/s. Krishna Associates

- - -

O R D E R

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

(The Order of the Court was made by P.K. MISRA, J)

Though the matter was listed for considering the question of stay and vacating the stay, on consent of the counsels, the writ petition itself is taken up for disposal.

2. The present writ petition has been filed by the Union of India and other subordinate officials for quashing the order dated 29.4.2004 in O.A.No.933 of 2003.

3. O.A.No.933 of 2003 was filed by the present Respondent No.1 challenging the punishment of removal from service. The present Respondent No.1 at the relevant time was working as Supervisor in the office of the second petitioner. The main charge was relating to unauthorised absence from duty. Upon an enquiry, delinquency was established and the disciplinary authority imposed the punishment of removal from service. The Appeal and the Revision having been rejected, O.A. was filed before the Tribunal.

4. The Tribunal passed the following order :-

> "8. In the light of the discussion above, we hold that the applicant succeeds and the ends of justice would be met if the following orders are passed :-
>
> (a) The impugned orders are quashed.
>
> (b) The respondents are directed to consider the case of the applicant for grant of appropriate leave, if available to his credit, and impose any one of the penalties on the applicant for the so called absence without leave. While doing so we make if clear that the period of absence will be treated as qualifying service for purposes like seniority, promotion, but not for backwages. This exercise shall be completed within 8 weeks of receipt of a copy of this order by the respondents."

5. At the time of entertaining the writ petition, while granting interim stay of the order of the Tribunal for a period of two weeks, it was further directed :-

> " In the meantime, the Central Government Standing Counsel shall obtain instruction as to whether the petitioners are willing to alter the punishment from removal to any other major penalty which would enable the employee to receive the terminal benefits, including pension."

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

Thereafter, no further order had been passed extending the interim stay.

6. At the time of hearing of the matter, learned counsel appearing for the petitioners has submitted that since the punishment had been imposed on consideration of the relevant materials, and thereafter the appeal and the revision having been rejected, there was no scope for the Tribunal to interfere with such punishment.

7. Learned counsel appearing for Respondent No.1 on the other hand has submitted that the order passed by the Tribunal was justified in the peculiar facts and circumstances of the case and, at any rate, the discretionary order passed by the Tribunal should not be interfered with.

8. We have heard the learned counsels appearing for both the parties at length and we have perused various materials on record. It is no doubt true that the present Respondent No.1 had remained absent for a long period. The Tribunal has found that the absence was on account of the fact that the present Respondent No.1 was suffering from some ailment. The Tribunal has further observed that the PMD in charge of the Hospital had given a certificate subsequently that the employee was fit to rejoin duty, but inspite of such medical opinion, the present petitioners did not consider the case of the employee and imposed the extreme punishment of removal from service, which was not justified.

9. The period of absence was for 14 months. As pointed out by the learned counsel for the petitioners, on several previous occasions the present employee had remained absent. On the other hand, the materials on record indicate that there was some mental depression for which the present Respondent No.1 was undergoing treatment.

10. Keeping in view the various facts and circumstances of the case, we are inclined to accept the submission of the learned counsel for the petitioners that such a person should not be reinstated in service, and cannot be allowed to continue in view of his chronic absence from time to time on many occasion. Yet, we feel that the extreme punishment of removal from service was disproportionate, particularly keeping in view the fact that the present Respondent No.1 was found to be suffering from bouts of mental depression intermittently. There is no dispute that except the allegation relating to absence, there was no other serious allegation against the present

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

Respondent No.1 at any time. Since the Respondent No.1 had rendered service for several years, it would be unjust to deprive him at least the pensionary benefits.

11. Having regard to all these aspects and keeping in view the peculiar facts and circumstances of the case, we feel interest of justice would be served by modifying the order of the Tribunal as well as modifying the order of punishment imposed by the departmental authorities. Accordingly, the writ petition is disposed of with the direction that the order of removal from service, as imposed by the disciplinary authority, shall be altered to that of compulsory retirement from 31.12.2004. The respondent No.1 shall be deemed to be continuing in service till 31.12.2004. The entire period shall be notionally calculated for the purpose of increments, etc., without the benefit of actual payment, and on the basis of such notional calculation, pension, gratuity, etc., shall be payable. The Respondent No.1 shall be entitled to all the terminal benefits, including the gratuity. Since the interim order of stay was passed only for a period of two weeks, the first respondent is also entitled to salary with effect from 1.8.2004 till the end of December, 2004, where after his pension and other terminal benefits shall be calculated and be paid. This direction shall be implemented within a period of three months from the date of receipt of the order.

12. With the above directions, the writ petition is disposed of. No costs. Consequently, WPMP.No.24693 of 2004 is closed.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

WEB COPY

To
1. The Secretary,UO I
   Ministry of Defence (DP&S)
   Sena Bhawan, New Delhi 11.

2. The General Manager,

https://hcservices.ecourts.gov.in/hcservices/

Heavy Vehicles Factory,
Avadi, Chennai 600 054.

3. The Addl. Director General
Ordnance Factory Board,
Armoured Vehicle Headquarters,
Avadi, Chennai 600 054.

4.The Registrar,
The Central Administrative Tribunal,
City Civil Court Buildings,
High Court, Chennai 600 104.

one cc to Mr K.Veeraraghavan, SCGSC Advocate Sr No. 55034

one cc to M/S Krishna Associates Advocate Sr No. 54975

pv(co)

nb

14-12-2004

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/